

BEST AVAILABLE COPY

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re patent application of

Hideaki KATO, et al.

Serial No.: 10/753,870

Group Art Unit: 2879

Filed: January 9, 2004

Examiner: Not Yet Assigned

For: LIGHT EMITTING DEVICE

Honorable Commissioner of Patents
Alexandria, Virginia 22313-1450

**PETITION TO REVIVE ABANDONED APPLICATION DUE TO
UNINTENTIONAL DELAY AND
FOR ACCEPTANCE OF DELAYED PAYMENT OF
FILING AND LATE PAYMENT SURCHARGE FEES AND
SUBMISSION OF DECLARATION
UNDER 37 C.F.R. § 1.37(b) AND MPEP § 601.01(f)**

Sir:

Applicants concurrently file herewith a Submission of Declaration which includes payment of the filing and late payment surcharge fees.

In accordance with Delgar, Inc., v. Schuyler (172 USPQ 513) (DDC 1971), 37 C.F.R. § 1.37(b) and MPEP § 601.01(f), Applicants hereby petition the Director to revive this abandoned application and accept delayed payment of filing and late payment surcharge fees due to unintentional failure to pay.

Applicants state that the Notice to File Missing Parts of Nonprovisional Application was not received, that the file jacket and docket records of the address of record were searched (a copy of the docket records are attached as Exhibits A-B to the Declaration of Mary C. Gibb, and are incorporated herein by reference), and that the entire delay in filing the

required reply from the due date for the reply until the filing of a grantable petition pursuant to 37 § C.F.R. 1.37(b) was unintentional.

Since Applicants had not received any communication from the USPTO, Applicants filed a Request for Notice to File Missing Parts of Nonprovisional Application and Official Filing Receipt on July 26, 2004 (Exhibit 2, with date-stamped post card receipt), a Second Request for Notice to File Missing Parts of Nonprovisional Application and Official Filing Receipt on September 24, 2004 (Exhibit 3, with date-stamped post card receipt), and a Third Request for Notice to File Missing Parts of Nonprovisional Application and Official Filing Receipt on November 5, 2004 (Exhibit 4, with date-stamped post card receipt).

Again, the first communication received by the Applicants from the USPTO on the above application was the Notice of Abandonment dated January 12, 2005 (Exhibit 1).

Applicants have never received the Notice to File Missing Parts of Nonprovisional Application (hereafter "NOMP") allegedly mailed April 22, 2004.

It is noted that different mailing dates are listed on the Notice of Abandonment and in the file history on our recently-activated private PAIR account. PAIR shows a mailing date of April 22, 2004 (Exhibit 5), while the actual NOMP which was mailed, as viewed from the file wrapper, shows a mailing date of April 21, 2004 (Exhibit 6).

It is further noted that our recently-activated private PAIR account confirms in the USPTO image file wrapper for this application that our first Request dated July 26, 2004, and our Third Request dated November 5, 2004, were received (Exhibit 7). The Second Request dated September 24, 2004, is not listed.

Accompanying this Petition is the Declaration of Mary C. Gibb, Manager of the Docketing Department for the address of record in the undersigned's law firm. As set forth in that Declaration, Ms. Gibb, in her capacity as Manager of the Docketing Department, is intimately familiar with all of the details regarding the processing of mail received in the Docketing Department, including correspondence received from the USPTO.

Attached to the Declaration is supporting documentation (Exhibits A and B) showing that no NOMP in the subject application was processed by the Docketing Department or received by the undersigned's law firm. In addition, the file jacket and docket records for the address of record have been searched for an NOMP in the subject application without success.

Exhibits A and B are copies of the docket record of the address of record showing all actions due by the firm of McGinn & Gibb, PLLC, at and around the alleged due date and final due date (two and six months after mailing of NOMP) -- June 21 and October 21, 2004 (according to the mailed NOMP in the PAIR file wrapper), and June 22 and October 22, 2004 (according to the Notice of Abandonment and PAIR file history). This evidence is acceptable proof of non-receipt as provided by 1156 O.G. 53.

The undersigned has been associated with McGinn & Gibb, PLLC, for a number of years, and in that time has been able to rely on the performance of the Docketing Department to provide conscientious, reliable, and competent notice of due dates for responses to correspondence received from the USPTO. Based on the undersigned's familiarity with the good work performed by the employees of the Docketing Department, it is respectfully

Serial No.: 10/753,870
Docket No.: PTGF-03104
HIR.086


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submitted that the only reasonable conclusion is that no NOMP was ever received by the undersigned's law firm for the above-identified application.

Pursuant to the above-noted filing of Requests for NOMP, detailed description of docket record, and searches of the file jacket and docket record for the address of record provided in the Declaration of Ms. Gibb, which are believed to satisfy fully the requirements set forth in MPEP § 711.03(c) and 1156 O.G. 53, Applicants respectfully request that the Director accept delayed payment of filing and late payment surcharge fees due to unintentional failure to pay as though no lapse had ever occurred.

Since this error is due to the U.S. Patent and Trademark Office, no fee is believed necessary. Please charge any deficiencies in fees and credit any overpayment of fees to Attorney's Deposit Account No. 50-0481.

Respectfully submitted,



Sean M. McGinn
Registration No. 34,386

Date: 3/11/05

McGinn & Gibb, PLLC
8321 Old Courthouse Rd., Suite 200
Vienna, Virginia 22182-3817
(703) 761-4100
Customer No. 21254



UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
 United States Patent and Trademark Office
 Address: COMMISSIONER FOR PATENTS
 P.O. Box 1450
 Alexandria, Virginia 22313-1450
 www.uspto.gov

APPLICATION NUMBER	FILING OR 371(C) DATE	FIRST NAMED APPLICANT	ATTY. DOCKET NO./TITLE
10/753,870	01/09/2004	Hideaki Kato	PTGF-03104

21254

MCGINN & GIBB, PLLC

8321 OLD COURTHOUSE ROAD JAN 13 2005

SUITE 200

VIENNA, VA 22182-3817

RECEIVEDH12-086
MCGINN & GIBB, P.C.

CONFIRMATION NO. 6111
 ABANDONMENT/TERMINATION
 LETTER



OC000000014940528

Date Mailed: 01/12/2005

NOTICE OF ABANDONMENT UNDER 37 CFR 1.53 (f) OR (g)

The above-identified application is abandoned for failure to timely or properly reply to the Notice to File Missing Parts (Notice) mailed on 04/22/2004.

- No reply was received.

A petition to the Commissioner under 37 CFR 1.137 may be filed requesting that the application be revived.

Under 37 CFR 1.137(a), a petition requesting the application be revived on the grounds of **UNAVOIDABLE DELAY** must be filed promptly after the applicant becomes aware of the abandonment and such petition must be accompanied by: (1) an adequate showing of the cause of unavoidable delay; (2) the required reply to the above-identified Notice; (3) the petition fee set forth in 37 CFR 1.17(l); and (4) a terminal disclaimer if required by 37 CFR 1.137(d).

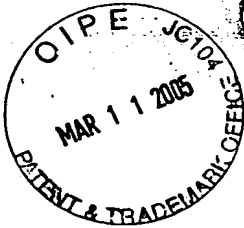
Under 37 CFR 1.137(b), a petition requesting the application be revived on the grounds of **UNINTENTIONAL DELAY** must be filed promptly after applicant becomes aware of the abandonment and such petition must be accompanied by: (1) a statement that the entire delay was unintentional; (2) the required reply to the above-identified Notice; (3) the petition fee set forth in 37 CFR 1.17(m); and (4) a terminal disclaimer if required by 37 CFR 1.137(d).

Any questions concerning petitions to revive should be directed to the "Office of Petitions" at (703) 305-9282. Petitions should be mailed to: Mail Stop Petitions, Commissioner for Patents, P.O. Box 1450, Alexandria VA 22313-1450.

*A copy of this notice **MUST** be returned with the reply.*

Request Woldeyes
 Customer Service Center
 Initial Patent Examination Division (703) 308-1202

PART 1 - ATTORNEY/APPLICANT COPY



HIR. OBLAS
Smmmas
Serial Number: 10753,870

Attorney's Post Card Filing Receipt

Papers Filed On: 7/26/04

Attorney's Docket Number: PT6F-03104 ☒ Patent

☐ Trademark

Applicant's Name: Kato et al. Application Filing Date: 1/9/04
Papers Filed Herewith:

- | | | |
|--|--|---|
| <input type="checkbox"/> Amendment | <input type="checkbox"/> Request for Extension of Time | <input type="checkbox"/> CPA Request |
| <input type="checkbox"/> Notice of Appeal | <input type="checkbox"/> Appeal Brief (in triplicate) | <input type="checkbox"/> Reply Brief |
| <input type="checkbox"/> IDS | <input type="checkbox"/> 1449 Form w/ Documents | <input type="checkbox"/> Priority Document(s) |
| <input type="checkbox"/> Assignment | <input type="checkbox"/> Recordation Cover Sheet | <input type="checkbox"/> Formal Drawings |
| <input type="checkbox"/> Drawing Corrections | <input type="checkbox"/> Issue Fee Transmittal | <input checked="" type="checkbox"/> Request for Missing Parts + OFR |
| <input type="checkbox"/> Other | | |

Fees Filed Herewith: \$ ☐ Check ☐ Charge Deposit Account:

Hand Delivered

HIR. OBLAS
Smmmas
Serial Number: 10753,870

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Papers Filed On: 7/26/04

Attorney's Docket Number: PT6F-03104 ☒ Patent

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|---|--|---|
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| <input type="checkbox"/> Drawing | <input type="checkbox"/> Issue Fee Transmittal | <input checked="" type="checkbox"/> Request for Missing Parts + OFR |
| <input type="checkbox"/> Other | | |

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Docket No. PTGF-03104
HIR.086



IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re patent application of

Hideaki Kato et al.

Serial No.: 10/753,870

Group Art Unit: Unknown

Filing Date: January 9, 2004

Examiner: Unknown

For: LIGHT EMITTING DEVICE

Honorable Commissioner of Patents
Alexandria, Virginia 22313-1450

**REQUEST FOR NOTICE TO FILE MISSING PARTS OF NONPROVISIONAL
APPLICATION AND OFFICIAL FILING RECEIPT**

Sir:

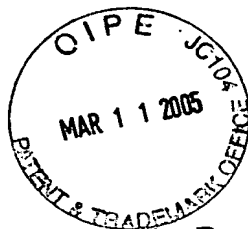
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Respectfully submitted,

Sean M. McGinn
Registration No. 34,386

Date: 7/26/04

McGinn & Gibb, PLLC
Intellectual Property Law
8321 Old Courthouse Road, Suite 200
Vienna, Virginia 22182-3817
(703) 761-4100
Customer No. 21254



**New Application Post Card Filing Receipt and
Request for Early Notification of Serial Number**

Request for Entry Number: PTGF-03/04
 Attorney's Docket Number: PTGF-03/04
 Applicant's Name: Kafetel
☒ Patent ☐ Trademark
 Application Filing Date: 1/9/04

Title: Light Emitting Device

Papers Filed Herewith:

24) Pages Specification, Claims and Abstract 36 Total Claims 13 Independent Claims

23 Sheets ☐ Formal Drawings ☒ Informal Drawings ☐ Priority Document(s)
☒ Patent Application Transmittal Sheet ☒ Declaration/Power of Attorney *Unexpected*
☐ IDS ☐ 1449 Form w/ ___ Documents ☐ Assignment ☐ Recordation Cover ☐
 Other _____

Other _____

Fees Filed Herewith: \$ _____ ☐ Check ☐ Charge Deposit Account: _____



HIR.086
Smmlhas

New Application Post Card Filing Receipt and Request for Early Notification of Serial Number

Attorney's Docket Number: PTGF-03/04
Applicant's Name: Kato et al
Application Filing Date: 1/19/04

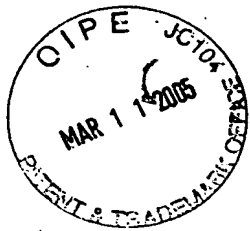
Title: Light Emitting Device

Papers Filed Herewith:

44 Pages Specification, Claims and Abstract 36 Total Claims 13 Independent Claims

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☐ IDS ☐ 1449 Form w/ ___ Documents ☐ Assignment ☐ Recordation Cover ☐ Other _____

Fees Filed Herewith: \$ _____ ☐ Check ☐ Charge Deposit Account:



HIK.086
S.M.W.Hus
Serial Number: 101753,870

Attorney's Post Card Filing Receipt

Papers Filed On: 9/24/04

Attorney's Docket Number: DTLF-03104 Patent ☒

☐ Trademark

Applicant's Name: Kato et al.

Application Filing Date: 1/9/04

Papers Filed Herewith:

- ☐ Amendment ☐ Request for Extension of Time ☐ CPA Request
☐ Notice of Appeal ☐ Appeal Brief (in triplicate) ☐ Reply Brief
☐ IDS ☐ 1449 Form w/ Documents ☐ Priority Document(s)
☐ Assignment ☐ Recordation Cover Sheet ☐ Formal Drawings
☐ Drawing Corrections ☐ Issue Fee Transmittal ☐ Missing Parts

☒ Other 2nd Request NOMP + OFR

Fees Filed Herewith: \$ ☐ Check ☐ Charge Deposit Account: _____

HIK.086
S.M.W.Hus
Serial Number: 101753,870

Attorney's Post Card Filing Receipt

Papers Filed On: 9/24/04

Delivered

Attorney's Docket Number: DTLF-03104 Patent ☒

☐ Trademark

Applicant's Name: Kato et al.

Application Filing Date: 1/9/04

Papers Filed Herewith:

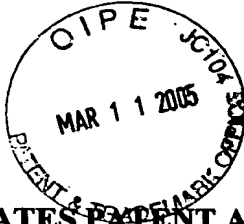
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☐ Drawing Corrections ☐ Issue Fee Transmittal ☐ Missing Parts

☒ Other 2nd Request NOMP + OFR

Fees Filed Herewith: \$ ☐ Check ☐ Charge Deposit Account: _____

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Docket No. PTGF-03104
HIR.086



IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re patent application of

Hideaki Kato et al.

Serial No.: 10/753,870

Group Art Unit: Unknown

Filing Date: January 9, 2004

Examiner: Unknown

For: LIGHT EMITTING DEVICE

Honorable Commissioner of Patents
Alexandria, Virginia 22313-1450

**SECOND REQUEST FOR NOTICE TO FILE MISSING PARTS OF
NONPROVISIONAL APPLICATION AND OFFICIAL FILING RECEIPT**

Sir:

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Respectfully submitted,

A handwritten signature in black ink, appearing to read "Sean M. McGinn".

Sean M. McGinn
Registration No. 34,386

Date: 9/24/04
McGinn & Gibb, PLLC
Intellectual Property Law
8321 Old Courthouse Road, Suite 200
Vienna, Virginia 22182-3817
(703) 761-4100
Customer No. 21254

HIR.086
Smm/has



**New Application Post Card Filing Receipt and
Request for Early Notification of Serial Number**

Attorney's Docket Number: PTGF-03/04 ☒ Patent ☐ Trademark
Applicant's Name: Katoctal Application Filing Date: 1/9/04

Title: Light Emitting Device

Papers Filed Herewith:

44 Pages Specification, Claims and Abstract 36 Total Claims 13 Independent Claims

23 Sheets ☐ Formal Drawings ☒ Informal Drawings ☐ Priority Document(s)
☒ Patent Application Transmittal Sheet ☒ Declaration/Power of Attorney Unexpected
☐ IDS ☐ 1449 Form w/ Documents ☐ Assignment ☐ Recordation Cover ☐
Other

Fees Filed Herewith: \$ ☐ Check ☐ Charge Deposit Account:



HIR.086
Smm/has

**New Application Post Card Filing Receipt and
Request for Early Notification of Serial Number**

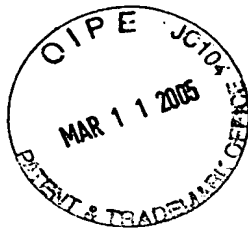
Attorney's Docket Number: PTGF-03/04 ☒ Patent ☐ Trademark
Applicant's Name: Katoctal Application Filing Date: 1/9/04

Title: Light Emitting Device

Papers Filed Herewith:

44 Pages Specification, Claims and Abstract 36 Total Claims 13 Independent Claims

23 Sheets ☐ Formal Drawings ☒ Informal Drawings ☐ Priority Document(s)
☒ Patent Application Transmittal Sheet ☒ Declaration/Power of Attorney Unexpected
☐ IDS ☐ 1449 Form w/ Documents ☐ Assignment ☐ Recordation Cover ☐
Other



HIK. 086
smmikas

Attorney's Post Card Filing Receipt

Serial Number: 10753,870

Papers Filed On: 11/5/04

Attorney's Docket Number: PT6F-03104 ☒ Patent

☐ Trademark

Applicant's Name: Kato et al Application Filing Date: 1/9/04
Papers Filed Herewith:

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| <input type="checkbox"/> Drawing Corrections | <input type="checkbox"/> Issue Fee Transmittal | <input type="checkbox"/> Missing Parts |

☒ Other 3rd Request for NOMP + OFR

Fees Filed Herewith: \$ ☐ Check ☐ Charge Deposit Account:

HIK. 086
smmikas

Attorney's Post Card Filing Receipt

Papers Filed On: 11/5/04

Serial Number: 10753,870

Attorney's Docket Number: PT6F-03104 ☒ Patent

☐ Trademark

Applicant's Name: Kato et al Application Filing Date: 1/9/04
Papers Filed Herewith:

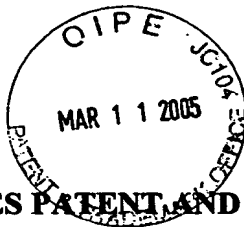
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☒ Other 3rd Request for NOMP + OFR

Fees Filed Herewith: \$ ☐ Check ☐ Charge Deposit Account:

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Docket No. PTGF-03104
HIR.086



IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re patent application of

Hideaki Kato et al.

Serial No.: 10/753,870

Group Art Unit: Unknown

Filing Date: January 9, 2004

Examiner: Unknown

For: LIGHT EMITTING DEVICE

Honorable Commissioner of Patents
Alexandria, Virginia 22313-1450

**THIRD REQUEST FOR NOTICE TO FILE MISSING PARTS OF NONPROVISIONAL
APPLICATION AND OFFICIAL FILING RECEIPT**

Sir:

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Respectfully submitted,

Sean M. McGinn
Registration No. 34,386

Date: 11/5/04

McGinn & Gibby, PLLC
Intellectual Property Law
8321 Old Courthouse Road, Suite 200
Vienna, Virginia 22182-3817
(703) 761-4100
Customer No. 21254



HIR.086
Smmhas

**New Application Post Card Filing Receipt and
Request for Early Notification of Serial Number**

Attorney's Docket Number: PTGF-03/04 ☒ Patent ☐ Trademark
Applicant's Name: Kato et al Application Filing Date: 1/19/04

Title: Light Emitting Device

Papers Filed Herewith:

44 Pages Specification, Claims and Abstract 36 Total Claims 13 Independent Claims

23 Sheets ☐ Formal Drawings ☒ Informal Drawings ☐ Priority Document(s)
☒ Patent Application Transmittal Sheet ☒ Declaration/Power of Attorney Unexpected
☐ IDS ☐ 1449 Form w/ Documents ☐ Assignment ☐ Recordation Cover ☐

Other
Fees Filed Herewith: \$ ☐ Check ☐ Charge Deposit Account:



HIR.086
Smmhas

**New Application Post Card Filing Receipt and
Request for Early Notification of Serial Number**

Attorney's Docket Number: PTGF-03/04 ☒ Patent ☐ Trademark
Applicant's Name: Kato et al Application Filing Date: 1/19/04

Title: Light Emitting Device

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Other



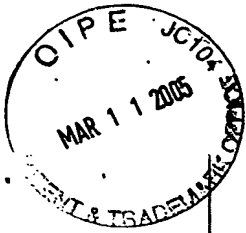
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EXHIBIT 5



PATENT APPLICATION INFORMATION RETRIEVAL



Search results as of: 1-14-2005::12:2:11 E.T.

Search results for application number: 10/753,870			
Application Number:	10/753,870	Customer Number:	21254
Filing or 371(c) Date:	01-09-2004	Status:	Abandoned -- Incomplete Application (Pre-examination)
Application Type:	Utility	Status Date:	01-12-2005
Examiner Name:	-	Location:	ELECTRONIC
Group Art Unit:	2879	Location Date:	-
Confirmation Number:	6111	Earliest Publication No:	-
Attorney Docket Number:	PTGF-03104	Earliest Publication Date:	-
Class/ Sub-Class:	313/-	Patent Number:	-
First Named Inventor:	Hideaki Kato, Aichi-ken, (JP)	Issue Date of Patent:	-
Title Of Invention:	Light emitting device		

Search Options

<input type="checkbox"/> Foreign Priority
<input type="checkbox"/> Image File Wrapper

File History

Date	Contents Description
06-23-2004	Abandonment -- During Preexam Processing
09-17-2004	Correspondence Address Change
04-22-2004	Notice Mailed--Application Incomplete--Filing Date Assigned
03-16-2004	Cleared by L&R (LARS)

03-02-2004	Referred to Level 2 (LARS) by OIPE CSR
01-23-2004	IFW Scan & PACR Auto Security Review
01-09-2004	Initial Exam Team nn

PAIR :

11/05/2004	Foreign Priority Papers Filed	PROSECUTION	34	<input type="checkbox"/>
11/05/2004	Information Disclosure Statement	PROSECUTION	3	<input type="checkbox"/>
11/05/2004	Foreign Reference	PROSECUTION	10	<input type="checkbox"/>
07/26/2004	Miscellaneous Incoming Letter	PROSECUTION	2	<input type="checkbox"/>
04/21/2004	Pre-Exam Formalities Notice	PROSECUTION	2	<input type="checkbox"/>
01/09/2004	Claim	PROSECUTION	10	<input type="checkbox"/>
01/09/2004	Abstract	PROSECUTION	1	<input type="checkbox"/>
01/09/2004	Drawings	PROSECUTION	23	<input type="checkbox"/>
01/09/2004	Oath or Declaration filed	PROSECUTION	2	<input type="checkbox"/>
01/09/2004	Transmittal of New Application	PROSECUTION	4	<input type="checkbox"/>
01/09/2004	Fee Worksheet (PTO-875)	PROSECUTION	1	<input type="checkbox"/>
01/09/2004	Specification	PROSECUTION	34	<input type="checkbox"/>

Sorted By : Document Category

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Docket No. PTGF-03104
HR.086



IPW

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re patent application of

Hideaki Kato et al.

Serial No.: 10/753,870

Group Art Unit: Unknown

Filing Date: January 9, 2004

Examiner: Unknown

For: LIGHT EMITTING DEVICE

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Intellectual Property Law

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Vienna, Virginia 22182-3817

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Customer No. 21254

HIR.086
Smm/has



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☒ Patent Application Transmittal Sheet ☒ Declaration/Power of Attorney Unexpected
☐ IDS ☐ 1449 Form w/ Documents ☐ Assignment ☐ Recordation Cover ☐
Other

Fees Filed Herewith: \$ ☐ Check ☐ Charge Deposit Account:



HIR.086
Smm/has

**New Application Post Card Filing Receipt and
Request for Early Notification of Serial Number**

Attorney's Docket Number: PTGF-03/04 ☒ Patent ☐ Trademark
Applicant's Name: Kafocet Application Filing Date: 1/9/04
Title: Light Emitting Device

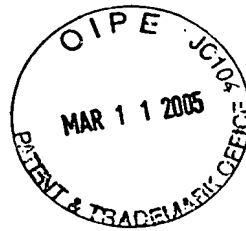
Papers Filed Herewith:

44 Pages Specification, Claims and Abstract 36 Total Claims 13 Independent Claims

23 Sheets ☐ Formal Drawings ☒ Informal Drawings ☐ Priority Document(s)
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Other

Fees Filed Herewith: \$ ☐ Check ☐ Charge Deposit Account:

Docket No: PTGF-03104
HIR.086



17W

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re patent application of

Hideaki Kato et al.

Serial No.: 10/753,870

Group Art Unit: Unknown

Filing Date: January 9, 2004

Examiner: Unknown

For: LIGHT EMITTING DEVICE

Honorable Commissioner of Patents
Alexandria, Virginia 22313-1450

**THIRD REQUEST FOR NOTICE TO FILE MISSING PARTS OF NONPROVISIONAL
APPLICATION AND OFFICIAL FILING RECEIPT**

Sir:

Applicants respectfully request copies of the Notice to File Missing Parts of Nonprovisional Application and Official Filing Receipt in the above-identified application. As of this date, Applicants have not received copies of the Notice to File Missing Parts of Nonprovisional Application and Official Filing Receipt for this application which was filed on January 9, 2004. A copy of the date-stamped post card receipt is attached.

Respectfully submitted,

Sean M. McGinn
Registration No. 34,386

Date: 11/5/04

McGinn & Gibb, PLLC
Intellectual Property Law
8321 Old Courthouse Road, Suite 200
Vienna, Virginia 22182-3817
(703) 761-4100
Customer No. 21254

IPW

Docket No. PTGF-03104
HIR.086



IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re patent application of

Hideaki Kato et al.

Serial No.: 10/753,870

Group Art Unit: Not Yet Assigned

Filing Date: January 9, 2004

Examiner: Unknown

For: LIGHT EMITTING DEVICE

Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

SUBMISSION OF FORMAL DRAWINGS

Sir:

Submitted herewith are twenty three (23) sheets of formal drawings comprising figures 1-23 for the above-identified patent application. Please substitute these formal drawings for the drawings which were filed with the application. Approval and acknowledgment of receipt are respectfully requested.

Respectfully submitted,

Sean M. McGinn
Registration No. 34,386

Date: 11/5/04
McGinn & Gibb, PLLC
Intellectual Property Law
8321 Old Courthouse Road, Suite 200
Vienna, VA 22182-3817
(703) 761-4100
Customer No. 21254

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re patent application of

Hideaki KATO, et al.

Serial No.: 10/753,870

Filed: January 9, 2004

For: LIGHT EMITTING DEVICE



Group Art Unit: 2879

Examiner: Not Yet Assigned

Honorable Commissioner of Patents
Alexandria, Virginia 22313-1450

DECLARATION OF MARY C. GIBB

Sir:

I, Mary C. Gibb, hereby declare as follows:

1. I am Manager of the Docketing Department of the law firm of McGinn & Gibb, PLLC.
2. My duties as Manager of the Docketing Department require me to be intimately familiar with how the firm handles the mail, facsimile, and courier packages which arrive at McGinn & Gibb, PLLC.
3. Each business day (Monday-Friday), McGinn & Gibb, PLLC, receives a large volume of correspondence from the U.S. Patent and Trademark Office (PTO). That correspondence relates to patent and trademark applications being handled by McGinn & Gibb, PLLC, and includes Office Actions. Generally, since McGinn & Gibb, PLLC, is located in Vienna, Virginia, PTO correspondence is received by the law firm within one or

Serial No.: 10/753,870
Docket No.: PTGF-03104
HIR.086

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two business days after the PTO mailing date, although sometimes it takes longer. All mail is received in the Docketing Department, including PTO correspondence. The PTO correspondence is handled as follows.

4. An individual employed in the Docketing Department of McGinn & Gibb, PLLC, receives all pieces of PTO correspondence before they are opened. That same individual opens each piece of correspondence from the PTO one at a time.

5. As the PTO correspondence is opened, an entry is made by that same individual by hand, in a docket book, for each such piece of correspondence requiring a response to be provided to the PTO by a certain due date. For example, a Notice to File Missing Parts of a Nonprovisional Application (NOMP) must be responded to within the response time specified therein (within two months of the mailing date), and so an entry would be made in the docket book on a due date for the required period of time for the NOMP and also six months after the mailing date of the NOMP (the last, non-extendable date). In the instant case, the notation for the two-month due date would have been "HIR.086 NOMP", and for the six-month due date would have been "HIR.086 NOMP (last day)". The docket record book for the address of record has been searched, and attached as Exhibit A to my Declaration are copies of the pages of the docket book for items having a due date of June 21 and October 21, 2004 (two months and six months from the alleged mailing date of the NOMP according to the NOMP in the PAIR file wrapper), as well as that of June 22 and October 22, 2004 (two months and six months from the alleged mailing date of the NOMP according to the Notice of Abandonment and the PAIR file history). As can be seen from Exhibit A, there is no entry for the above-identified application ("HIR.086 NOMP" or

“HIR.086 NOMP (last day)”) indicating that the NOMP in question was never received by McGinn & Gibb, PLLC.

6. Once a PTO NOMP received on a given date has been manually entered in the docket book as above described, the appropriate file for the PTO NOMP is pulled and matched up to that NOMP. The appropriate file and the PTO NOMP is then given to the secretary to the attorney responsible for handling the file.

7. On a weekly basis, a docket of cases due that week and the pertinent response due dates is given to each attorney and staff employee at McGinn & Gibb, PLLC. This docket is then double-checked with the docket maintained by individual secretaries. I have searched these docket record lists for the address of record, and there is no entry (“HIR.086 NOMP” or “HIR.086 NOMP (last day)”) for the above-identified application. Attached as Exhibit B to my Declaration are copies of the lists of the submitted cases due the weeks of June 20-26, 2004, and October 17-23, 2004. As can be seen from Exhibit B, there is no entry (“HIR.086 NOMP” or “HIR.086 NOMP (last day)”) relating to a PTO mailing of an NOMP in connection with the above-identified application.

8. Based on my review of Exhibits A-B, and on my personal knowledge of the procedures followed by McGinn & Gibb, PLLC, in the Docketing Department for handling PTO NOMP, a search of the docket records for the address of record, and a search of the file jacket, I conclude that no NOMP was received by McGinn & Gibb, PLLC, for the above-identified application.

Serial No.: 10/753,870
Docket No.: PTGF-03104
HIR.086

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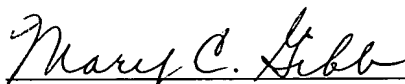
9. To date, the Notice of Abandonment mailed on January 12, 2005, has been the only PTO correspondence in the above-identified application received by McGinn & Gibb, PLLC.

Further Declarant saith not.

I declare further that all statements made herein of my own knowledge are true and that all statements made on information and belief are believed to be true; and further, that these statements were made with the knowledge that willful false statements and the like so made are punishable by fine or imprisonment, or both, under Section 1001 of Title 18 of the United States Code, and that such willful false statements may jeopardize the validity of the application or any patent issuing thereon.

Date: _____

3/11/05



Mary C. Gibb
Manager, Docketing Department

McGinn & Gibb, PLLC
8321 Old Courthouse Rd., Suite 200
Vienna, VA 22182-3817
(703) 761-4100
Customer No. 21254

2004 173rd day - 193 days follow
Summer begins

MONDAY

21

JUNE

WEB-163 ^{allowed}	4/2/04	FINAC (5mo.)	DAB
+ GUA.001		App due 8/21	SMM
HIR-047 allowed IF due 6/4			
+ YOR.160 and 6/21		FINAC (2mo.)	FEC
5/25 WEB-105		INTERVIEW Summary	FT2
Adm HIR-011		IDS	Smm
YOR.52 ^{6/20} 522 6/18		New Apps Bar Dates?	FEC

abd IGA-026 ad 6/21	FINAL (L-Day)	FEC
10/20 NEC-250 DIV	Resp. (L-Day)	JJD Smm
Edr3 TAC-037	FINAL (L-Day)	JEH
10/21 WAK-032 ad 8/23 & X	FINAL (L-Day)	FEC
10/20 YOR-160	FINAL (L-Day)	FEC
5/1 FOTIT-001	Resp. (L-Day)	Smm
5/8/83 ASH-004	FINAL (L-Day)	JEH
7/21 AHB-076	Resp. (L-Day)	PEM
5/20 UAT-035	Resp. (L-Day)	Smm
7/21 KOD-062	Resp. (L-Day)	Smm
10/21 KOD-052 ad 8/20	FINAL (L-Day)	JND
7/21 USH-019	Resp. (L-Day)	JJD Smm
10/21 NAB-190 ad 7/30 & 8/23	FINAL (smo.)	JTD
ext X ORL-028	FINAL (smo.)	JTD
10/21 KYOR-432 PCT #431 PCT	Chap II (19 months)	PEM
FMG-002 PCT	File Nat'l Stage	JPS
10/21 XNAB-106	Response	SMT Smm
X SUZ-024 ad 10/21	FINAL (3mo.)	JEH
ext X ACM-021	Response	JEH Smm
✓ X AMA-027 ad 10/5	FINAL (3mo.)	JEH
ext X EBI-002	Resp.	JJD SA
abd MAR-062	Response	FEC Smm
10/21 X YOR-451	Response	SMT Smm
10/21 X SHH-032 DIV	Issue Fee	FEC
10/22 X AMA-001	Issue Fee	PEM
10/21 X AMA-059	Issue Fee	Smm
10/21 LIN-002	2x (OAC)	Smm
9/30 YOR-419	Response (1mo.)	Smm
9/28 YOR-222	Response (1mo.)	JND
10/21 TASH-005	Response (1mo.)	FEC
10/21 X HUR-006	Notice of Attn. Compliance	SMT

JUNE

22

TUESDAY

2004 174th day - 192 days follow

3/23 NEC. 259	Respl (Last Day)	SM	9/2
4/2 DEC. 032	Resp (Last Day)	PM	9/10
4/24 OR 459	Resp	FE	9/10
4/24 FUJIT. 057	N Infecting Resp.	SM	4/10
4/23 N6B. 305	NCAP (1 day)	Smm	6/2
4/23 RUC 9/21 N6B. 161	FINAL (5mo)	PAB	4/1
4/23 Jax (EB) 001	Response	JSO Smm	6/1
4/23 NEC. 173	Response	FEC	
4/17 ORT. 036	Response	Smm	
4/23 SHH. 031	Response	JMS Smm	6/1
4/23 N6B. 149	Issue Fee	PEM	6/1
4/23 N6B. 024	IF + DWG 54/26	JEH	7/1
7/1 SHH. 036	Issue Fee	FJZ	
6/22 MAT. 007	Issue Fee	FEC	
4/23 OAK. 094	Issue Fee	PEM	
5/4 MAT. 039	IRS	Smm	
ex ✓ DEC. 011	Revive	PEM	✓

ISSUE DATE:

6, 754, 259 YOR. 124 - JJD + * 6, 753, 097 - AMMA. 005PLY - PEM
 6, 753, 765 KOB. 018 - JEH *
 6, 753, 991 KLB. 227 - Smm +
 6, 753, 688 FIS. 071 - FEC +
 6, 754, 051 I6A. 01804V - Smm +
 6, 204 21.1 160. 018 5/21 ✓

1/22 + 11.058	Resp. (1 Day)	SMAB	7/
9/29 y AM 048	Resp. (1 Day)	PAB	7/
1/22 MGB-198	Resp. (1 Day)	Smm	7/
1/21 FUJIT-014	Resp. (1 Day)	JEH	New
✓ + KAT 016 ad 9/29	FINAL (3mo.)	JEH	✓
1/22 KAS-001	Resp. (1 Day)	JPS	10/2
10/22 SHIM-008	Response	JEH Smm	✓
10/22 + EUD-059	Response	FJZ	✓
10/12 MAI-009	IF + dudge (1 Day)	JMD	9/
add + 101.435 ad 9/22	FINAL (3mo.)	SMT	10/2
10/19 HGB-151	Response	JJD	
ext ✓ + FUJIT-023 CON	Response	FEC	
✓ + KAT 016	FINAL (3mo.)	JEH	
10/22 + NGB-265	Response	SMT Smm	
7/22 KAS-001	Resp (1 Day)	JPS	
11/3 + FUJIT-006	Issue fee	JJD	
10/21 HGB-128	Response (1mo.)	Smm	
10/22 + ORI-084	IDS	Smm	
10/22 + ORI-085	IDS	Smm	
10/19 + ORI-086	IDS	Smm	
10/21 + ORI-087	IDS	Smm	
10/19 + FUJIT-023	IDS	FEC	
ext ✓ + FUJIT-023 Cont going abd.	IDS	FEC	

DOCKET

June 20-26, 2004

Please compare this with your personal docket!
Let us know if you have any changes or additions.

Add entries docketed after this docket is distributed.

Use this new docket if dates overlap with previous version.

Please immediately inform us of any additions that have not been processed in Docketing.

<u>DUE DATE</u>	<u>FILE</u>	<u>COMMENTS</u>	<u>ATTY</u>
Sunday, 6/20/04	HIR.087	IDS (6 mo. NOMP?)	SMM
	YOR.312	Final (2 mo.)	PEM
	YOR.174	Final (2 mo.)	FEC
	ALM.038	Final (2 mo.)	JJD
Monday, 6/21/04	GUA.001	New app due 8/21	SMM
	YOR.160	Final (2 mo.)	FEC
	YOR.521	New App (bar date?)	FEC
	YOR.527	New App (bar date?)	FEC
Tuesday, 6/22/04	DEC.011	Revive	PEM
	NGB.149	IF	PEM
	WAK.094	IF	PEM
	MAT.007	IF	FEC
	NEC.173	Response	FEC
	NGB.024	IF & Drawings	JEH
	SHI.036DIV	IF	FJZ
	SHI.031	Response	JND
	EBI.001	Response	JJD
Wednesday, 6/23/04	CLO.012	IDS (3 Mo. NOMP?)	SMM
	NGB.287	IF	SMM
	NGB.330	IF	SMM
	NGB.331	IF	SMM
	DEC.012	IF	PEM
	EBO.010US	NOMP 2 X	PEM

<u>DUE DATE</u>	<u>FILE</u>	<u>COMMENTS</u>	<u>ATTY</u>
	EBO.013	NOMP PCT 1 X	PEM
	NGB.087	Response	JEH
	NGB.095	Response	JEH
	YOR.132	Final (4 mo. amended 4/23)	JEH
	ONO.004	IF (last day)	JND
	ALM.049	Response	JJD
Thursday, 6/24/04	YOR.393	Final (3 mo.)	PEM
	YOR.397	Final (3 mo.)	FEC
	YOR.249	Response	PEM
	YOR.250	Response	JEH
	FUJ.029	Final (3 mo.)	FJZ
	FUJIT.009	IF (last day)	SMM
	NGB.084	Response	JEH
	NGB.240	IF (last day)	SMM
	IGA.029	Response	JND
	FUJI.005	IF	JND
	ORI.066	IF	JJD
Friday, 6/25/04	NGB.154	Response	PEM
	HIR.051	Response	JEH
	AMA.056	IF & drawings (last day)	SMM
	AMA.054	IF & drawings (last day)	SMM
	YAS.043	Response	JND
	YAN.018	IF (last day)	SMM
	NGB.062	Response	SMT
	NGB.225	IF	JEH
	YOR.531	Response	SMT
	FIS.065	Examiner's Answer 1 X	JEH
	FUJI.021	1 X	FEC
	SHIM.008	Response (1 mo.)	SMM
Saturday, 6/26/04	AMA.050	Response	JJD
	NEC.228	Response	JJD
	KUR.012	Final (3 mo.)	PEM

DUE DATE**FILE****COMMENTS****ATTY**

NGB.082

Response

JEH

YOR.205

Response

FEC

BUR.006-3

Final (2 mo.)

JJD

NGB.248

Response (1 mo.) & Int. Sum.

SMT

FUJIT.061

1 X

PEM

TAK.042

IDS

JND

DOCKET

October 17-23, 2004

Please compare this with your personal docket!
Let us know if you have any changes or additions.

Add entries docketed after this docket is distributed.

Use this new docket if dates overlap with previous version.

Please immediately inform us of any additions that have not been processed in Docketing.

<u>DUE DATE</u>	<u>FILE</u>	<u>COMMENTS</u>	<u>ATTY</u>
Sunday, 10/17/04	HIR.105	IDS (NOMP recd?)	SMM
	NEC.230DIV	1 X	SMM
	NGB.160	Final (4 mo. amended 9/17)	PEM
	YOR.491	Final (4 mo. amended 8/17)	FEC
	HIR.049	Final (4 mo. amended 9/10)	JND
	IDE.003	2 X	JND
	NEC.273	1 X	JND
	NIS.062	2 X	JND
	FUS.053	Final (4 mo.)	JJD
	NEC.241CIP	1 X	SMT
	IPB.001	Final (5 mo. amended 9/13)	JPS
	VKR.001	Final (5 mo.)	JPS
Monday, 10/18/04	UNI.022	IF (last day)	SMM
	NEC.142	Final (4 mo.)	FEC
	NGB.122	Final (4 mo. amended 9/20)	JEH
	ONO.006	IF	JND
	NGB.085	IF	JJD
	BRAN.003EP	Annuity Fee (last day)	JPS
Tuesday, 10/19/04	WAK.116	IF	SMM
	EBOX.005US	NOMP (last day)	PEM
	MAR.069DIV2	IF (last day)	PEM
	YOR.523	Final (3 mo. amended 9/20)	JJD

<u>DUE DATE</u>	<u>FILE</u>	<u>COMMENTS</u>	<u>ATTY</u>
Wednesday, 10/20/04	NEC.263	IF	PEM
	YOR.160	Appeal Brief	FEC
	NTMI.001	File New Appl.	JEH
	ALM.038	Appeal Brief	JJD
	YOR.094	Final (2 mo.)	JJD
Thursday, 10/21/04	AMA.059	IF	SMM
	LIN.002	2 X	SMM
	AMA.001	IF	PEM
	YOR.432PCT	Chap. II (19 mos.)	PEM
	ASH.005	Response (1 mo.)	FEC
	SHI.032DIV	IF	FEC
	WAK.072	Final (last day amended 8/23)	FEC
	ALM.021	Response	JEH
	AMA.027	Final (3 mo. amended 10/5)	JEH
	SUZ.024	Final (3 mo.)	JEH
	KUD.052	Final (last day amended 8/20)	JND
	EBI.002	Response	JJD
	NEC.250DIV	Response (last day)	JJD
Friday, 10/22/04	NGB.140	Final (5 mo. amended 7/30 & 8/23)	JJD
	ORI.028	Final (5 mo.)	JJD
	NGB.126	Response	SMT
	NUV.006	Ntc. of Noncompliance	SMT
	YOR.451	Response	SMT
	KUD.059	Response	FJZ
	ORI.084	IDS 3 mo.	SMM
	ORI.085	IDS 3 mo.	SMM
	ORI.086	IDS 3 mo.	SMM
	ORI.087	IDS 3 mo.	SMM
	FUJIT.023	IDS	FEC
	FUJIT.023CON	Response	FEC
	FUJIT.023CON	IDS	FEC
	KAT.016	Final (3 mo. amended 9/29)	JEH
	SHIM.008	Response	JEH
	FUJIT.006	IF	JJD

<u>DUE DATE</u>	<u>FILE</u>	<u>COMMENTS</u>	<u>ATTY</u>
	NGB.265	Response	SMT
	YOR.435	Final (3 mo. amended 9/22)	. SMT
Saturday, 10/23/04	HIR.072	Response (1 mo.)	SMM
	NGB.166	Final (4 mo. 1 X)	JND
	ALM.024	Final (2 mo.)	JJD
	MAS.001	Response	JJD

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